

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 11, 2020

SEAN F. MCAVOY, CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

DAVID F.,¹

Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:20-cv-03083-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 15, 17

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 15, 17. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing,

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

1 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
2 motion, ECF No. 15, and grants Defendant's motion, ECF No. 17.

3 JURISDICTION

4 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
5 1383(c)(3).

6 STANDARD OF REVIEW

7 A district court's review of a final decision of the Commissioner of Social
8 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
9 limited; the Commissioner's decision will be disturbed "only if it is not supported
10 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
11 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
12 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
13 (quotation and citation omitted). Stated differently, substantial evidence equates to
14 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
15 citation omitted). In determining whether the standard has been satisfied, a
16 reviewing court must consider the entire record as a whole rather than searching
17 for supporting evidence in isolation. *Id.*

18 In reviewing a denial of benefits, a district court may not substitute its
19 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
20 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one

1 rational interpretation, [the court] must uphold the ALJ's findings if they are
2 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674
3 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an
4 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless
5 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."
6 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's
7 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
8 *Sanders*, 556 U.S. 396, 409-10 (2009).

9 **FIVE-STEP EVALUATION PROCESS**

10 A claimant must satisfy two conditions to be considered "disabled" within
11 the meaning of the Social Security Act. First, the claimant must be "unable to
12 engage in any substantial gainful activity by reason of any medically determinable
13 physical or mental impairment which can be expected to result in death or which
14 has lasted or can be expected to last for a continuous period of not less than twelve
15 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant's
16 impairment must be "of such severity that he is not only unable to do his previous
17 work[,] but cannot, considering his age, education, and work experience, engage in
18 any other kind of substantial gainful work which exists in the national economy."
19 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
4 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
5 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the
6 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
7 404.1520(b), 416.920(b).

8 If the claimant is not engaged in substantial gainful activity, the analysis
9 proceeds to step two. At this step, the Commissioner considers the severity of the
10 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
11 claimant suffers from "any impairment or combination of impairments which
12 significantly limits [his or her] physical or mental ability to do basic work
13 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
14 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
15 however, the Commissioner must find that the claimant is not disabled. *Id.*

16 At step three, the Commissioner compares the claimant's impairment to
17 severe impairments recognized by the Commissioner to be so severe as to preclude
18 a person from engaging in substantial gainful activity. 20 C.F.R. §§
19 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
20

1 severe than one of the enumerated impairments, the Commissioner must find the
2 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the
4 severity of the enumerated impairments, the Commissioner must pause to assess
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),
6 defined generally as the claimant's ability to perform physical and mental work
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
8 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
9 analysis.

10 At step four, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing work that he or she has performed in
12 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
13 If the claimant is capable of performing past relevant work, the Commissioner
14 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).
15 If the claimant is incapable of performing such work, the analysis proceeds to step
16 five.

17 At step five, the Commissioner considers whether, in view of the claimant's
18 RFC, the claimant is capable of performing other work in the national economy.
19 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
20 the Commissioner must also consider vocational factors such as the claimant's age,

1 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
2 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
5 work, analysis concludes with a finding that the claimant is disabled and is
6 therefore entitled to benefits. *Id.*

7 The claimant bears the burden of proof at steps one through four above.
8 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
9 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
10 capable of performing other work; and 2) such work “exists in significant numbers
11 in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*
12 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

13 ALJ’S FINDINGS

14 On October 11, 2016, Plaintiff applied both for Title II disability insurance
15 benefits and Title XVI supplemental security income benefits alleging an amended
16 disability onset date of May 1, 2015.² Tr. 16, 68, 204-16. The applications were
17 denied initially and on reconsideration. Tr. 148-54; Tr. 155-61. Plaintiff appeared

18
19 ² Plaintiff previously applied for benefits in August 2013; the claim was denied on
20 October 7, 2013 and Plaintiff did not appeal the denial. Tr. 71.

1 before an administrative law judge (ALJ) on March 5, 2019. Tr. 36-67. On April
2 11, 2019, the ALJ denied Plaintiff's claim. Tr. 13-35.

3 At step one of the sequential evaluation process, the ALJ found Plaintiff,
4 who met the insured status requirements through September 30, 2017, has not
5 engaged in substantial gainful activity since May 1, 2015. Tr. 19. At step two, the
6 ALJ found that Plaintiff has the following severe impairments: intellectual
7 disorder, depression, anxiety, and alcohol abuse disorder. *Id.*

8 At step three, the ALJ found Plaintiff does not have an impairment or
9 combination of impairments that meets or medically equals the severity of a listed
10 impairment. *Id.* The ALJ then concluded that Plaintiff has the RFC to perform the
11 full range of work at all exertional levels but with the following nonexertional
12 limitations:

13 [Plaintiff] can understand simple instructions and perform simple
14 tasks; he should have no interaction with the public; he can have only
15 occasional, cursory interaction with co-workers and normal
16 interaction with supervisors.

17 Tr. 22.

18 At step four, the ALJ found Plaintiff is unable to perform any of past
19 relevant work. Tr. 29. At step five, the ALJ found that, considering Plaintiff's
20 age, education, work experience, RFC, and testimony from the vocational expert,
there were jobs that existed in significant numbers in the national economy that
Plaintiff could perform, such as industrial cleaner, hand packager, and warehouse

1 checker. Tr. 30. Therefore, the ALJ concluded Plaintiff was not under a disability,
2 as defined in the Social Security Act, from the amended alleged onset date of May
3 1, 2015, through the date of the decision. *Id.*

4 On April 10, 2020, the Appeals Council denied review of the ALJ's
5 decision, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for
6 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

7 ISSUES

8 Plaintiff seeks judicial review of the Commissioner's final decision denying
9 him disability insurance benefits under Title II and supplemental security income
10 benefits under Title XVI of the Social Security Act. Plaintiff raises the following
11 issues for review:

- 12 1. Whether the ALJ properly evaluated the medical opinion evidence;
- 13 2. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
- 14 3. Whether the ALJ properly evaluated Plaintiff's literacy.

15 ECF No. 15 at 2.

16 DISCUSSION

17 A. Medical Opinion Evidence

18 Plaintiff contends the ALJ improperly evaluated the opinions of N.K. Marks,
19 Ph.D.; Jeff Teal, Ph.D.; Charles Miller, M.D.; Peter Weiss, Ph.D.; and John
20 Simonds, M.D. ECF No. 15 at 4-17.

1 There are three types of physicians: “(1) those who treat the claimant
2 (treating physicians); (2) those who examine but do not treat the claimant
3 (examining physicians); and (3) those who neither examine nor treat the claimant
4 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”
5 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
6 Generally, a treating physician’s opinion carries more weight than an examining
7 physician’s, and an examining physician’s opinion carries more weight than a
8 reviewing physician’s. *Id.* at 1202. “In addition, the regulations give more weight
9 to opinions that are explained than to those that are not, and to the opinions of
10 specialists concerning matters relating to their specialty over that of
11 nonspecialists.” *Id.* (citations omitted).

12 If a treating or examining physician’s opinion is uncontradicted, the ALJ
13 may reject it only by offering “clear and convincing reasons that are supported by
14 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
15 “However, the ALJ need not accept the opinion of any physician, including a
16 treating physician, if that opinion is brief, conclusory and inadequately supported
17 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
18 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
19 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
20 may only reject it by providing specific and legitimate reasons that are supported

1 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81
2 F.3d 821, 830-31 (9th Cir. 1995)). The opinion of a nonexamining physician may
3 serve as substantial evidence if it is supported by other independent evidence in the
4 record. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

5 *1. Dr. Marks*

6 On August 25, 2016, Dr. Marks, an examining source, performed a
7 psychological evaluation and administered the WAIS-IV, and provided an opinion
8 on Plaintiff’s functioning. Tr. 323-30. Dr. Marks diagnosed Plaintiff with
9 unspecified neurocognitive disorder and a rule out diagnosis of mild intellectual
10 disability, and noted “possible alcohol abuse.” Tr. 325, 330. Dr. Marks opined
11 Plaintiff had moderate limitations in understanding, remembering, and persisting in
12 tasks by following very short and simple instructions; marked limitations in
13 understanding, remembering, and persisting in tasks by following detailed
14 instructions, performing activities within a schedule, maintaining regular
15 attendance, and being punctual within customary tolerances without special
16 supervision, learning new tasks, performing routine tasks without special
17 supervision, being aware of normal hazards and taking appropriate precautions,
18 and asking simple questions or requesting assistance; and severe limitations in
19 adapting to changes in a routine work setting, making simple work-related
20 decision, communicating and performing effectively in a work setting, maintaining

1 appropriate behavior in a work setting, completing a normal workday and work
2 week without interruptions from psychologically based symptoms, and setting
3 realistic goals and planning independently. Tr. 326. Dr. Marks further opined
4 Plaintiff's symptoms overall have a severe rating, the impairments are not
5 primarily the result of alcohol/drug abuse, the impairments are permanently
6 limiting, a protective payee is recommended, and vocational training/services
7 would not minimize or eliminate barriers to employment. *Id.* The ALJ gave Dr.
8 Marks' opinion little weight. Tr. 27. As Dr. Marks' opinion is contradicted by the
9 opinion of Dr. John Simonds, Tr. 45-46, the ALJ was required to give specific and
10 legitimate reasons, supported by substantial evidence, to reject the opinion. *See*
11 *Bayliss*, 427 F.3d at 1216.

12 First, the ALJ found Dr. Marks' opinion was internally inconsistent. Tr. 27.
13 Relevant factors to evaluating any medical opinion include the amount of relevant
14 evidence that supports the opinion, the quality of the explanation provided in the
15 opinion, and the consistency of the medical opinion with the record as a whole.
16 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007); *Orn v. Astrue*, 495
17 F.3d 625, 631 (9th Cir. 2007). Moreover, a physician's opinion may be rejected if
18 it is unsupported by the physician's treatment notes. *See Connett v. Barnhart*, 340
19 F.3d 871, 875 (9th Cir. 2003). The ALJ noted Dr. Marks' examination of Plaintiff
20 contained largely normal mental status examination results, which is inconsistent

1 with the severity of the limitations he assessed. Tr. 27. On examination, Plaintiff
2 had normal speech, was cooperative, relaxed, friendly, open, accepting, and had
3 good eye contact, and he had normal perception, orientation, thoughts,
4 concentration, insight and judgement. Tr. 327-28. Plaintiff had abnormal
5 memory, fund of knowledge and abstract thought. Tr. 328. While Dr. Marks
6 opined Plaintiff had severe limitations in his ability to maintain appropriate
7 behavior in the work setting, his notes reflect Plaintiff's generally normal behavior
8 during the examination. Tr. 326-28. Plaintiff argues Dr. Marks' examination is
9 consistent with her opinion, and that Dr. Eather and Dr. Robinson opined Dr.
10 Marks' opinion was supported by Dr. Marks' examination. ECF No. 15 at 6, ECF
11 No. 18 at 2. However, any error in the ALJ's finding that the objective evidence is
12 not consistent with Dr. Marks' opinion would be harmless as the ALJ gave other
13 specific and legitimate reasons, supported by substantial evidence, to reject the
14 opinion. *See Molina*, 674 F.3d at 1115.

15 Second, the ALJ found that because Dr. Marks did not provide a sufficient
16 explanation for her opinion, the opinion appeared to be substantially based on
17 Plaintiff's self-report. Tr. 27. The Social Security regulations "give more weight
18 to opinions that are explained than to those that are not." *Holohan*, 246 F.3d at
19 1202. "[T]he ALJ need not accept the opinion of any physician, including a
20 treating physician, if that opinion is brief, conclusory and inadequately supported

1 by clinical findings.” *Bray*, 554 at 1228. A physician’s opinion may also be
2 rejected if it is too heavily based on a claimant’s properly discounted complaints.
3 *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001).

4 The ALJ found Dr. Marks did not provide a sufficient explanation for the
5 marked and severe limitations. Tr. 27. However, Dr. Marks explained Plaintiff’s
6 full scale IQ places him in the mild intellectual disability range, all of his scores
7 were in the borderline to extremely low in all areas, and Dr. Marks opined,
8 “[Plaintiff] will have significantly more difficulty than same-aged peers with
9 understanding what he hears, with performing hands-on activities, with learning by
10 watching or by hearing. His short term memory is weak. He lacks background
11 information suggesting that his long-term memory is weak as well.” Tr. 329-30.
12 Dr. Marks also noted Plaintiff could not complete Part B of the Trail Making test,
13 suggesting Plaintiff has poor visual-motor planning, poor executive functioning
14 abilities, he is lacking mental flexibility, he cannot easily maintain two trains of
15 thought at the same time and will be highly sensitive to distractors around him, and
16 he will not be able to easily switch to doing things another way once he learns
17 something one way. Tr. 330. The ALJ’s finding that Dr. Marks did not offer a
18 sufficient explanation for his opinion is not supported by substantial evidence.
19 However, the error is harmless as the ALJ gave other specific and legitimate
20

1 reasons, supported by substantial evidence, to reject the opinion. *See Molina*, 674
2 F.3d at 1115.

3 Third, the ALJ found Dr. Marks' opinion is inconsistent with Plaintiff's
4 activities of daily living and ability to previously work. Tr. 27. An ALJ may
5 discount a medical source opinion to the extent it conflicts with the claimant's
6 daily activities. *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 601-02 (9th
7 Cir. 1999). Additionally, "[t]he ALJ may reject a medical opinion that is
8 inconsistent with the claimant's work activity." *Schultz v. Berryhill*, No. 3:16-cv-
9 00757-JR, 2017 WL 2312951, at *4 (D. Or. Apr. 21, 2017) (citing *Valentine v.*
10 *Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 692-93 (9th Cir. 2009)).

11 The ALJ noted that while Dr. Marks administered an IQ test and found
12 Plaintiff had an IQ of 66, Plaintiff was able to independently act as a caregiver for
13 his mother and previously was able to work. Tr. 27. Dr. Marks diagnosed Plaintiff
14 with unspecified neurocognitive disorder and a rule out diagnosis of intellectual
15 disability, Tr. 325, and discussed Plaintiff's permanent limitations due to his
16 intellectual disability, Tr. 329-30. However, Plaintiff was able to work at a
17 substantial gainful activity level for several years despite his intellectual disability,
18 Tr. 223. Plaintiff earned over the substantial gainful activity threshold from 1998
19 through 2011. Tr. 217-20. Plaintiff reported that he moved in with his mother to
20 help with her care in 2012, Tr. 533, and reported he had not been able to find a job

1 in the town he now resides in, Tr. 534. An opinion that Plaintiff has permanent
2 limitations due to his intellectual disability is inconsistent with his ability to engage
3 in substantial gainful activity for over ten years, and his work only ending when he
4 moved to take over as the caregiver for his mother. In his role as a caregiver,
5 Plaintiff was able to perform the needed tasks including household chores,
6 cooking, caring for five dogs, shoveling snow, and cutting wood, and Plaintiff
7 reported walking up to 10 miles daily with his dogs, going fishing, and talking
8 daily on the phone with a friend. Tr. 27 (citing Tr. 350, 360, 388, 470, 516-35).
9 Plaintiff argues Dr. Marks opined Plaintiff has disabling limitations due to a
10 neurocognitive and intellectual disability and not a mental health impairment, yet
11 argues his ability to sustain employment prior to the alleged onset date is not a
12 relevant consideration. ECF No. 15 at 7, 9. However, as Plaintiff's neurocognitive
13 and intellectual disability are permanent conditions that existed prior to the alleged
14 onset date, Plaintiff's ability to sustain employment despite the very disability he
15 alleges is now disabling is a relevant consideration. Plaintiff also contends his
16 activities are not inconsistent with his reported inability to work. ECF No. 15 at
17 10-11. However, Plaintiff's ability to independently act as a caregiver, coupled
18 with his previous years of employment, is inconsistent with his allegation of a
19 disabling intellectual disability. Plaintiff further contends Dr. Eisenhower's opinion
20 supported Dr. Marks' opinion, ECF No. 15 at 6, however Dr. Eisenhower stated Dr.

1 Marks' opinion was not fully supported by the objective evidence, and pointed to
2 Plaintiff's ability to handle self-care, perform chores, prepare meals, care for his
3 mom, use Facebook, and request assistance, Tr. 379. This was a specific and
4 legitimate reason, supported by substantial evidence, to reject Dr. Marks' opinion.

5 Lastly, the ALJ found Dr. Marks' opinion is contradicted by the opinion of
6 Dr. Simonds. Tr. 27. Generally, an ALJ should accord more weight to the opinion
7 of an examining physician than to that of a nonexamining physician. *See Andrews*,
8 53 F.3d at 1040-41. However, the opinion of a nonexamining physician may serve
9 as substantial evidence if it is "supported by other evidence in the record and [is]
10 consistent with it." *Id.* at 1041. The ALJ gave greater weight to the opinion of Dr.
11 Simonds, who the ALJ noted is familiar with the Social Security program, and who
12 had the opportunity to review the longitudinal record versus Dr. Marks having
13 access to a limited number of records and a single examination. Tr. 27. The ALJ
14 found Dr. Simonds is a Board-Certified psychiatrist who gave detailed testimony,
15 and his opinion is consistent with the totality of the record, including Plaintiff's
16 ability to work previously and act as a caregiver for his mother, as well as his
17 improvement with treatment. Tr. 23-25. While Plaintiff contends Dr. Simonds'
18 opinion does not directly address several portions of Dr. Marks' opinion, ECF No.
19 18 at 3, Dr. Simonds opined Plaintiff has no more than mild to moderate
20 limitations, and is capable of sustaining simple, routine work, Tr. 44, which

1 conflicts with all of Dr. Marks' disabling limitations. As the ALJ gave other
2 supported reasons to reject Dr. Marks' opinion, the ALJ reasonably gave more
3 weight to the opinion of Dr. Simonds than he gave to Dr. Marks' opinion. As
4 such, the ALJ gave specific and legitimate reasons, supported by substantial
5 evidence, to reject Dr. Marks' opinion.

6 2. *Dr. Teal*

7 On April 19, 2018 and February 22, 2019, Dr. Teal, a treating psychologist,
8 diagnosed Plaintiff with major depressive disorder, alcohol use disorder, and
9 cognition disorder. Tr. 436, 545. Dr. Teal opined Plaintiff's cognition disorder
10 appeared to be the primary disorder impacting Plaintiff's ability to work. *Id.* In
11 April 2018, Dr. Teal further opined Plaintiff has: mild limitations in carrying out
12 very short simple instructions, performing activities within a schedule, maintaining
13 regular attendance and being punctual within customary tolerances, working in
14 coordination with or proximity to others without being distracted by them,
15 completing a normal workday/workweek without interruptions from
16 psychologically based symptoms and performing at a consistent pace without an
17 unreasonable number/length of rest periods, asking simple questions or requesting
18 assistance, and responding appropriately to changes in the work setting; moderate
19 limitations in remembering locations and work-like procedures,
20 understanding/remembering very short simple instructions, carrying out detailed

1 instructions, sustaining an ordinary routine without special supervision, making
2 simple work-related decisions, interacting appropriately with the general public,
3 accepting instructions and responding appropriately to criticism from supervisors,
4 getting along with coworkers/peers without distracting them or exhibiting
5 behavioral extremes, maintaining socially appropriate behavior and adhering to
6 basic standards of neatness/cleanliness, being aware of normal hazards and taking
7 appropriate precautions; and marked limitations in understanding and remembering
8 detailed instructions, maintaining attention/concentration for extended periods,
9 traveling in unfamiliar places or using public transportation, and setting realistic
10 goals or making plans independently of others. Tr. 433-35. Regarding the “B”
11 criteria, Dr. Teal opined Plaintiff has moderate limitations in understanding,
12 remembering, or applying information, interacting with others, concentrating,
13 persisting or maintaining pace, and adapting or managing oneself; he opined
14 Plaintiff has minimal capacity to adapt to changes in his environment or to
15 demands that are not already part of his daily life, he would be off-task 21 to 30
16 percent of time, and Plaintiff would miss two days per month if he worked full-
17 time. Tr. 435. In February 2019, Dr. Teal rendered a similar opinion. Tr. 542-44.
18 The ALJ gave Dr. Teal’s opinions little weight. Tr. 26. As Dr. Teal’s opinion is
19 contradicted by the opinion of Dr. Simonds, Tr. 45-46, the ALJ was required to

1 give specific and legitimate reasons, supported by substantial evidence, to reject
2 the opinion. *See Bayliss*, 427 F.3d at 1216.

3 First, the ALJ found that because Dr. Teal's opinions consisted of a
4 checkbox form that did not contain any objective findings, the opinions appeared
5 to be based substantially on Plaintiff's self-report. Tr. 26. A medical opinion may
6 be rejected by the ALJ if it is conclusory or inadequately supported. *Bray*, 554
7 F.3d at 1228; *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). For this
8 reason, individual medical opinions are preferred over check-box reports. *Crane v.*
9 *Shalala*, 76 F.3d 251, 253 (9th Cir. 1996); *Murray v. Heckler*, 722 F.2d 499, 501
10 (9th Cir. 1983). However, if treatment notes are consistent with the opinion, a
11 conclusory opinion, such as a check-the-box form, may not automatically be
12 rejected. *See Garrison*, 759 F.3d at 1014 n.17; *see also Trevizo v. Berryhill*, 871
13 F.3d 664, 677 n.4 (9th Cir. 2017) ("[T]here is no authority that a 'check-the-box'
14 form is any less reliable than any other type of form"). A physician's opinion may
15 also be rejected if it is too heavily based on a claimant's properly discounted
16 complaints. *Tonapetyan*, 242 F.3d at 1149.

17 The ALJ noted that Dr. Teal did not cite to any objective findings as the
18 basis for his opinion. Tr. 26. Further, the ALJ found Dr. Teal's treatment records
19 do not support his opinion, as records showed Plaintiff's symptoms improved with
20 treatment. *Id.* (citing Tr. 407). Plaintiff contends Dr. Teal's treatment records are

1 consistent with his opinion, as he conducted a cognitive screening that
2 demonstrated deficits, and he opined that while Plaintiff had improvement in his
3 depression and alcohol use, his primary limiting condition is his cognition disorder.
4 ECF No. 15 at 11-12 (citing Tr. 359). While Dr. Teal noted the screening
5 indicated Plaintiff's deficits include executive functioning and memory deficits,
6 and he would benefit from simple language and written instructions, Tr. 359, there
7 is no explanation as to why Plaintiff would have limitations in his ability to interact
8 with the public, get along with coworkers/peers, or several other areas of
9 functioning Dr. Teal identified. While Dr. Teal noted some abnormalities at his
10 initial visit with Plaintiff, such as poor eye contact, the treatment notes do not
11 contain evidence that support Dr. Teal's opinion that Plaintiff has multiple marked
12 limitations. Tr. 360. Given the lack of objective evidence to support his opinion,
13 the ALJ reasonably found Dr. Teal's opinions too heavily relied on Plaintiff's self-
14 report. This was a specific and legitimate reason, supported by substantial
15 evidence, to reject Dr. Teal's opinions.

16 Second, the ALJ found Dr. Teal's opinion relied on Plaintiff's discredited
17 self-report. Tr. 26. A physician's opinion may be rejected if it is too heavily based
18 on a claimant's properly discounted complaints. *Tonapetyan*, 242 F.3d at 1149.
19 As Dr. Teal did not cite to objective evidence nor provide an explanation to
20 support his opinion that Plaintiff has limitations in multiple areas of functioning,

1 including social functioning, the ALJ found the opinion relied on Plaintiff's self-
2 report. Tr. 26. Because the ALJ rejected the Plaintiff's statements for clear and
3 convincing reasons, as discussed *supra*, this was a specific and legitimate reason,
4 supported by substantial evidence, to reject Dr. Teal's opinion.

5 Third, the ALJ found Dr. Teal's opinions were inconsistent with Plaintiff's
6 activities of daily living and work history. Tr. 26. An ALJ may discount a medical
7 source opinion to the extent it conflicts with the claimant's daily activities.

8 *Morgan*, 169 F.3d at 601-02. Additionally, "[t]he ALJ may reject a medical
9 opinion that is inconsistent with the claimant's work activity." *Schultz*, No. 3:16-
10 cv-00757-JR, 2017 WL 2312951, at *4 (citing *Valentine*, 574 F.3d at 692-93). The
11 ALJ noted Dr. Teal's opinion appears to conflict with Plaintiff's own statements,
12 as Plaintiff admitted he would be able to work in the fast food industry. Tr. 26
13 (citing Tr. 460). The ALJ also found Dr. Teal's opinion was inconsistent with
14 Plaintiff's ability to work in unskilled jobs in the past, act as a caregiver for his
15 mother, and to engage in a variety of daily activities including walking up to 10
16 miles daily and going fishing. Tr. 26. As discussed *supra*, Plaintiff's ability to
17 work, act as a caregiver, and engage in an array of daily activities is inconsistent
18 with disabling limitations due to an intellectual disability. This was a specific and
19 legitimate reason, supported by substantial evidence, to reject Dr. Teal's opinion.

1 Fourth, the ALJ gave more weight to the opinion of Dr. Simonds than he
2 gave to the opinions of Dr. Teal. Tr. 27. Generally, an ALJ should accord more
3 weight to the opinion of an examining physician than to that of a nonexamining
4 physician. *See Andrews*, 53 F.3d at 1040-41. However, the opinion of a
5 nonexamining physician may serve as substantial evidence if it is “supported by
6 other evidence in the record and [is] consistent with it.” *Id.* at 1041. The ALJ
7 noted Dr. Simonds had the opportunity to review the longitudinal record, versus
8 Dr. Teal who only had access to limited records, and unlike Dr. Teal, Dr. Simonds
9 is familiar with the Social Security program and rules. Tr. 26-27. As the ALJ gave
10 other supported reasons to reject Dr. Teal’s opinion, the ALJ reasonably gave more
11 weight to the opinion of Dr. Simonds than he gave to Dr. Teal’s opinion.

12 Lastly, the ALJ noted Dr. Teal did not specify whether his opinion that
13 Plaintiff would be off task applied to skilled or unskilled work. Tr. 26. Plaintiff
14 contends the ALJ erred in his analysis because Dr. Teal’s opinion indicates
15 Plaintiff would be off-task 30 percent of the time regardless of skill level. ECF
16 No. 15 at 12-13. However, any error would be harmless as the ALJ gave other
17 specific and legitimate reasons, supported by substantial evidence, to reject Dr.
18 Teal’s opinion. *See Molina*, 674 F.3d at 1115.

1 3. *Dr. Miller*

2 On June 25, 2018, Dr. Miller, a treating physician, rendered an opinion on
3 Plaintiff's functioning. Tr. 437-38. Dr. Miller diagnosed Plaintiff with depression,
4 hypertension, insomnia, alcohol abuse, anger, history of learning disability,
5 smoking tobacco dependence, and mild intellectual disability. Tr. 437. Dr. Miller
6 opined Plaintiff is unable to maintain employment due to his intellectual disability
7 and emotional lability; working would cause Plaintiff's condition to deteriorate
8 because it would cause frustration, depression, and anger lability due to intellectual
9 limitations; Plaintiff is unable to manage his own finances or shop without
10 assistance; and Plaintiff would miss four or more days per month if he worked full-
11 time. Tr. 437-38. The ALJ gave Dr. Miller's opinion little weight. Tr. 26. As Dr.
12 Miller's opinion is contradicted by the opinion of Dr. Simonds, Tr. 45-46, the ALJ
13 was required to give specific and legitimate reasons, supported by substantial
14 evidence, to reject the opinion. *See Bayliss*, 427 F.3d at 1216.

15 First, the ALJ found Dr. Miller rendered an opinion on a subject outside of
16 his expertise. Tr. 26. A medical provider's specialization is a relevant
17 consideration in weighing medical opinion evidence. 20 C.F.R. §§ 404.1527(c)(5),
18 416.927(c)(5). While the ALJ may give more weight to a specialist, it is error for
19 the ALJ to reject a treating physician's opinions solely based on this reasoning.
20 *Sprague*, 812 F.2d at 1231 (recognizing that the treating physician was qualified to

1 give a medical opinion as to the claimant's mental state despite not being a
2 psychiatrist). The ALJ noted Dr. Miller is a primary care physician, and not a
3 psychiatrist or psychologist, yet he rendered an opinion on Plaintiff's mental
4 functioning. Tr. 26. Plaintiff contends the ALJ erred in considering Dr. Miller's
5 specialty, ECF No. at 13, however the ALJ reasonably considered Dr. Miller's
6 specialty when weighing his opinion, and gave other reasons to reject the opinion.
7 The ALJ also gave more weight to Dr. Simonds, the Board-Certified psychiatrist
8 who testified at the hearing. Tr. 26. The ALJ reasonably gave more weight to the
9 psychological opinion of a psychiatrist over a primary care physician. As such,
10 this was a specific and legitimate reason to reject Dr. Miller's opinion.

11 Second, the ALJ found Dr. Miller's opinion is inconsistent with the
12 objective evidence, including his own examination notes. Tr. 26. A medical
13 opinion may be rejected if it is unsupported by medical findings. *Bray*, 554 F.3d at
14 1228; *Batson*, 359 F.3d at 1195; *Thomas*, 278 F.3d at 957; *Tonapetyan*, 242 F.3d at
15 1149; *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992). Furthermore, a
16 physician's opinion may be rejected if it is unsupported by the physician's
17 treatment notes. *Connett*, 340 F.3d at 875. The ALJ found Dr. Miller's opinion is
18 inconsistent with his own notes, which reflect a largely normal mental status
19 examination, as well as the record as a whole, which demonstrated improvement
20 with treatment. Tr. 26 (citing Tr. 407, 444-51). Dr. Miller's examination notes

1 indicate Plaintiff had normal orientation, speech, memory, attention, fund of
2 knowledge, judgment/insight, thoughts, and thoughts, and only mildly dysthymic
3 mood with congruent affect. Tr. 441-42. Dr. Miller's other notes contain minimal
4 evidence of abnormal mental/cognitive functioning. In July 2017, Plaintiff was
5 oriented, with a quiet affect and dysthymic mood, but normal judgment, and
6 thoughts. Tr.418. In May 2018, Plaintiff denied anxiety and depression, he was
7 well-groomed, and in no acute distress. Tr. 481-82. In October 2018, Plaintiff had
8 a euthymic mood with appropriate and congruent affect, normal associations, he
9 was well-groomed, alert, and oriented. Tr. 507. During a visit with Dr. Teal,
10 Plaintiff reported sleeping better, being less restless/fidgety and irritable, and
11 getting along reasonably well with his cousin and mother since resuming
12 Sertraline. Tr. 407. The ALJ also noted Dr. Miller appeared to rely on Dr. Marks'
13 opinion, although the ALJ found Dr. Marks' opinion was based on a largely
14 normal mental status examination. Tr. 27. As discussed *supra*, Dr. Marks'
15 examination contained some abnormalities, however any error in the ALJ's
16 consideration of Dr. Miller's reliance on Dr. Marks' opinion/examination is
17 harmless as the ALJ gave other specific and legitimate reasons, supported by
18 substantial evidence, to reject Dr. Miller's opinion. *See Molina*, 674 F.3d at 1115.

19 Third, the ALJ found Dr. Miller's opinion is inconsistent with Plaintiff's
20 activities of daily living and work history. Tr. 26. An ALJ may discount a medical

1 source opinion to the extent it conflicts with the claimant's daily activities.
2 *Morgan*, 169 F.3d at 601-02. Additionally, "[t]he ALJ may reject a medical
3 opinion that is inconsistent with the claimant's work activity." *Schultz*, No. 3:16-
4 cv-00757-JR, 2017 WL 2312951, at *4 (citing *Valentine*, 574 F.3d at 692-93). The
5 ALJ found Dr. Miller's opinion is inconsistent with Plaintiff's activities, including
6 caregiving for his mother. Tr. 26. The ALJ found Dr. Miller's opinion is
7 inconsistent with the totality of the evidence, while Dr. Simonds' opinion is more
8 consistent with the evidence, including Plaintiff's ability to previously work. Tr.
9 24, 26. As discussed *supra*, Plaintiff's activities and work history are inconsistent
10 with disabling limitations due to an intellectual disability. This was a specific and
11 legitimate reason to reject Dr. Miller's opinion.

12 Lastly, the ALJ gave more weight to the opinion of Dr. Simonds than to Dr.
13 Miller's opinion. Tr. 26. Generally, an ALJ should accord more weight to the
14 opinion of an examining physician than to that of a nonexamining physician. *See*
15 *Andrews*, 53 F.3d at 1040-41. However, the opinion of a nonexamining physician
16 may serve as substantial evidence if it is "supported by other evidence in the record
17 and [is] consistent with it." *Id.* at 1041. The ALJ gave more weight to the opinion
18 of Dr. Simonds, a Board-Certified psychiatrist, who reviewed the longitudinal
19 record, and provided specific citations to the record to support his opinion. Tr. 26.
20 As the ALJ gave other supported reasons to reject Dr. Miller's opinion, the ALJ

1 reasonably gave more weight to the opinion of Dr. Simonds than he gave to Dr.
2 Miller's opinion.

3 *4. Dr. Weiss*

4 On August 23, 2018, Dr. Weiss, an examining psychologist, examined
5 Plaintiff and gave an opinion on his functioning. Tr. 537-40. Dr. Weiss diagnosed
6 Plaintiff with depression, intellectual disability, and noted alcohol use disorder as a
7 rule out diagnosis. Tr. 538. Dr. Weiss opined Plaintiff has no to mild limitations
8 in performing routine tasks without special supervision, making simple work-
9 related decisions, being aware of normal hazards and taking appropriate
10 precautions, and asking simple questions or requesting assistance; moderate
11 limitations in adapting to changes in a routine work setting, and maintaining
12 appropriate behavior in a work setting; marked limitations in learning new tasks;
13 and severe limitations in understanding, remembering, and persisting in tasks by
14 following detailed instructions, performing activities within a schedule,
15 maintaining regular attendance, and being punctual within customary tolerances
16 without special supervision, communicating and performing effectively in a work
17 setting, completing a normal workday/workweek without interruptions from
18 psychological symptoms, and setting realistic goals and planning independently.
19 Tr. 538-39. The ALJ gave Dr. Weiss' opinion little weight. Tr. 25. As Dr. Weiss'
20 opinion is contradicted by the opinion of Dr. Simonds, Tr. 45-46, the ALJ was

1 required to give specific and legitimate reasons, supported by substantial evidence,
2 to reject the opinion. *See Bayliss*, 427 F.3d at 1216.

3 First, the ALJ found Dr. Weiss' opinion was internally inconsistent. Tr. 25.

4 Relevant factors to evaluating any medical opinion include the amount of relevant

5 evidence that supports the opinion, the quality of the explanation provided in the

6 opinion, and the consistency of the medical opinion with the record as a whole.

7 *Lingenfelter*, 504 F.3d at 1042; *Orn*, 495 F.3d at 631. Moreover, a physician's

8 opinion may be rejected if it is unsupported by the physician's treatment notes.

9 *See Connett*, 340 F.3d at 875. The ALJ found Dr. Weiss' opinion was inconsistent

10 with his examination of Plaintiff, which contained "largely normal mental status

11 examination" findings. Tr. 25. On examination, Plaintiff had normal appearance,

12 speech, attitude/behavior, thoughts, orientation, perception, memory,

13 insight/judgment, and abstract thought, but had a depressed mood, dysthymic

14 affect, and abnormal fund of knowledge and concentration. Tr. 539-40. Although

15 Plaintiff had normal behavior during the examination, Dr. Weiss opined Plaintiff

16 had moderate limitations in maintaining appropriate behavior in a work setting.

17 Tr. 538, 540. Although Plaintiff had normal insight, judgment, thoughts,

18 perception, and memory on examination, Dr. Miller opined Plaintiff had severe

19 limitations in his ability to set realistic goals and plan independently. Tr. 538, 540.

20 While Plaintiff argues Dr. Weiss reviewed Dr. Marks' opinion which provided

1 support for Dr. Weiss' opinion, ECF No. 15 at 15, 'the ALJ reasonably found Dr.
2 Miller's opinion is inconsistent with his own examination. This was a specific and
3 legitimate reason, supported by substantial evidence, to reject Dr. Miller's opinion.

4 Second, the ALJ found Dr. Weiss did not provide a sufficient explanation
5 for his opinion, the opinion appeared to be substantially based on Plaintiff's self-
6 report. Tr. 25. The Social Security regulations "give more weight to opinions that
7 are explained than to those that are not." *Holohan*, 246 F.3d at 1202. "[T]he ALJ
8 need not accept the opinion of any physician, including a treating physician, if that
9 opinion is brief, conclusory and inadequately supported by clinical findings."

10 *Bray*, 554 at 1228. The Ninth Circuit in *Ghanim v. Colvin*, 763 F.3d 1154, 1162
11 (9th Cir. 2014) contemplated that medical sources rely on self-reports to varying
12 degrees and held that an ALJ may reject a medical source's opinion as based on
13 unreliable self-reports only when the medical source relied "more heavily" "on a
14 patient's self-reports than on clinical observations." 763 F.3d at 1162. A
15 physician's opinion may be rejected if it is too heavily based on a claimant's
16 properly discounted complaints. *Tonapetyan*, 242 F.3d at 1149. The ALJ noted
17 Dr. Weiss did not provide a sufficient explanation for his opinion that Plaintiff has
18 multiple marked and severe limitations. Tr. 25. While Dr. Weiss' examination
19 notes some abnormalities, there is no explanation that ties the abnormalities to his
20 opinion, nor is there any explanation for the limitations that appear to correlate to

1 normal examination findings. Additionally, while Plaintiff alleges he is
2 permanently disabled due to an intellectual disability and not a mental health
3 condition, Dr. Weiss opined Plaintiff's limitations would last 12 months, and there
4 is no explanation as to why the limitations would only last 12 months. Tr. 539.
5 Given the lack of explanation or citation to objective evidence to support his
6 opinion, the ALJ reasonably found Dr. Weiss' opinion was substantially based on
7 Plaintiff's self-report. This was a specific and legitimate reason, supported by
8 substantial evidence, to reject Dr. Weiss' opinion.

9 Third, the ALJ gave more weight to the opinion of Dr. Simonds than to Dr.
10 Weiss' opinion. Tr. 25-26. Generally, an ALJ should accord more weight to the
11 opinion of an examining physician than to that of a nonexamining physician. *See*
12 *Andrews*, 53 F.3d at 1040-41. However, the opinion of a nonexamining physician
13 may serve as substantial evidence if it is "supported by other evidence in the record
14 and [is] consistent with it." *Id.* at 1041. The ALJ gave more weight to the opinion
15 of Dr. Simonds, who is familiar with the Social Security regulations and who
16 reviewed the longitudinal record rather than Dr. Weiss, who had access to only a
17 limited amount of records and his own examination. Tr. 25. As the ALJ gave
18 other supported reasons to reject Dr. Weiss' opinion, the ALJ reasonably gave
19 more weight to the opinion of Dr. Simonds than he gave to Dr. Weiss' opinion.

1 5. *Dr. Simonds*

2 Dr. Simonds, a reviewing medical expert, testified and rendered an opinion
3 on Plaintiff's functioning at the hearing. Tr. 38-49. Dr. Simonds opined Plaintiff's
4 diagnosis of cognitive disorder was nonspecific and too vague, there is evidence
5 of a borderline IQ and history of learning disability but Plaintiff has been able to
6 perform simple work in the past, he has mostly experienced situational anxiety,
7 depressive disorder improved to full remission with medication, and he does not
8 see evidence to support the diagnosis of a personality disorder. Tr. 43. He opined
9 Plaintiff has moderate impairments in comprehension/understanding, mild to
10 moderate impairment in social interaction, mild impairment in concentration, and
11 mild to moderate impairment in adaptability. Tr. 44. He further opined Plaintiff
12 would be capable of simple, repetitive tasks, with superficial or no contact with the
13 public and superficial, occasional contact with coworkers. *Id.* Dr. Simonds opined
14 Plaintiff's symptoms were worse earlier on during the relevant time period when
15 Plaintiff's alcohol use was a significant problem, Tr. 47, and Plaintiff's social
16 functioning improved to mild over time, Tr. 45-46. When asked if Dr. Simonds
17 agreed with Dr. Teal's opinion that Plaintiff would be off task 21 to 30 percent of
18 the time, given his intellectual disability, Dr. Simonds stated, "Well, yea. He has
19 intellectual disability, but he doesn't meet a listing for it." Tr. 49. Plaintiff's
20 counsel followed up, clarifying he was not asking about a listing, but whether Dr.

1 Simonds agreed Plaintiff would be off task in the 20 percent range, to which Dr.
2 Simonds responded Plaintiff would be off task more often for complex jobs, and he
3 would be off task less for medium complexity jobs. Tr. 49. Plaintiff's counsel
4 asked if Plaintiff would be off task 10 to 20 percent of the time, and Dr. Simonds
5 responded, "It would be less. Maybe 10. I don't know. I can't give you a figure
6 on that. It's not going to be 20 percent." *Id.* The ALJ gave Dr. Simonds' opinion
7 great weight. Tr. 24. As Dr. Simonds is a non-examining source, the ALJ must
8 consider the opinion and whether it is consistent with other independent evidence
9 in the record. *See* 20 C.F.R. §§ 404.1527(b),(c)(1), 416.927(b),(c)(1); *Tonapetyan*,
10 242 F.3d at 1149; *Lester*, 81 F.3d at 830-31.

11 Plaintiff contends the ALJ erred by rejecting Dr. Simonds' opinion that
12 Plaintiff would be off task "maybe" 10 percent of the time. ECF No. 15 at 15-16.
13 Plaintiff argues Dr. Simonds' opinion was disabling as the vocational expert
14 testified that an individual who is off task 10 percent or more of the time in an
15 unskilled work environment is not likely to maintain employment. *Id.* at 16 (citing
16 Tr. 64-65). However, Dr. Simonds stated he could not give a specific answer as to
17 the amount of time Plaintiff would be off-task, and stated Plaintiff would only
18 "maybe" be off task 10 percent of the time. Tr. 49. As Dr. Simonds testified
19 Plaintiff could sustain simple, routine work, Tr. 44, and otherwise stated he could
20 not give a specific amount of time Plaintiff would be off task, Plaintiff's argument

1 that Dr. Simonds gave a disabling opinion is not supported by the evidence. As
2 such, the ALJ did not reject Dr. Simonds.

3 In summary, the ALJ gave specific and legitimate reasons, supported by
4 substantial evidence, to reject the opinions of Dr. Marks, Dr. Teal, Dr. Miller, and
5 Dr. Weiss, and did not reject Dr. Simonds' opinion. Plaintiff is not entitled to
6 remand on these grounds.

7 **B. Plaintiff's Symptom Claims**

8 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
9 convincing in discrediting his symptom claims. ECF No. 15 at 17-20. An ALJ
10 engages in a two-step analysis to determine whether to discount a claimant's
11 testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2.
12 "First, the ALJ must determine whether there is objective medical evidence of an
13 underlying impairment which could reasonably be expected to produce the pain or
14 other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted).
15 "The claimant is not required to show that [the claimant's] impairment could
16 reasonably be expected to cause the severity of the symptom [the claimant] has
17 alleged; [the claimant] need only show that it could reasonably have caused some
18 degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

19 Second, "[i]f the claimant meets the first test and there is no evidence of
20 malingering, the ALJ can only reject the claimant's testimony about the severity of

1 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
2 rejection.” *Ghanim*, 763 F.3d at 1163 (citations omitted). General findings are
3 insufficient; rather, the ALJ must identify what symptom claims are being
4 discounted and what evidence undermines these claims. *Id.* (quoting *Lester*, 81
5 F.3d at 834; *Thomas*, 278 F.3d at 958 (requiring the ALJ to sufficiently explain
6 why it discounted claimant’s symptom claims)). “The clear and convincing
7 [evidence] standard is the most demanding required in Social Security cases.”
8 *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r*
9 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

10 Factors to be considered in evaluating the intensity, persistence, and limiting
11 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
12 duration, frequency, and intensity of pain or other symptoms; 3) factors that
13 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
14 side effects of any medication an individual takes or has taken to alleviate pain or
15 other symptoms; 5) treatment, other than medication, an individual receives or has
16 received for relief of pain or other symptoms; 6) any measures other than treatment
17 an individual uses or has used to relieve pain or other symptoms; and 7) any other
18 factors concerning an individual’s functional limitations and restrictions due to
19 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §§
20 416.929(c), 404.1529(c). The ALJ is instructed to “consider all of the evidence in

1 an individual's record," to "determine how symptoms limit ability to perform
2 work-related activities." SSR 16-3p, 2016 WL 1119029, at *2.

3 The ALJ found that Plaintiff's medically determinable impairments could
4 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's
5 statements concerning the intensity, persistence, and limiting effects of his
6 symptoms were not entirely consistent with the evidence. Tr. 22.

7 *1. Objective Medical Evidence*

8 The ALJ found Plaintiff's symptom claims are inconsistent with the
9 objective evidence. *Id.* An ALJ may not discredit a claimant's symptom
10 testimony and deny benefits solely because the degree of the symptoms alleged is
11 not supported by objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853,
12 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991);
13 *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch v. Barnhart*, 400 F.3d
14 676, 680 (9th Cir. 2005). However, the objective medical evidence is a relevant
15 factor, along with the medical source's information about the claimant's pain or
16 other symptoms, in determining the severity of a claimant's symptoms and their
17 disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2),
18 416.929(c)(2).

19 The ALJ noted that while Plaintiff's condition has waxed and waned over
20 the years, the objective evidence as a whole is inconsistent with Plaintiff's

1 symptom claims. Tr. 23. In May 2015, Plaintiff reported feeling better and he had
2 normal memory, mood, and affect. *Id.* (citing Tr. 365-66). Plaintiff received
3 limited mental health treatment until he was evaluated by Dr. Teal in May 2016,
4 during which Plaintiff's primary complaint was an inability to secure employment.
5 Tr. 23. On examination, Plaintiff demonstrated some abnormalities, including
6 poor eye contact and poor but understandable articulation of speech. *Id.* (citing Tr.
7 360-61). In July 2016, Plaintiff had abnormal memory, but after Plaintiff's
8 medication was adjusted, Plaintiff had normal affect, and an improved PHQ-9
9 score. Tr. 23 (citing Tr. 348, 358). After a period of medication non-compliance,
10 Plaintiff resumed his medication and his PHQ-9 score again improved in April
11 2017, and his depression was noted as in full remission in July 2017. Tr. 23 (citing
12 Tr. 407, 415). In April and May 2018, Plaintiff's depression remained in
13 remission, and Plaintiff had unremarkable mental status examinations. Tr. 23
14 (citing Tr. 470, 485, 487, 490, 492). Dr. Miller's June 2018 examination was
15 largely normal. Tr. 26 (citing Tr. 442). Dr. Weiss' examination in August 2018
16 was also largely normal. Tr. 25 (citing Tr. 540).

17 The ALJ also found Plaintiff had improvement with treatment and
18 medication. Tr. 23. The effectiveness of treatment is a relevant factor in
19 determining the severity of a claimant's symptoms. 20 C.F.R. §§ 404.1529(c)(3),
20 416.929(c)(3) (2011); *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006

(9th Cir. 2006) (determining that conditions effectively controlled with medication are not disabling for purposes of determining eligibility for benefits); *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (recognizing that a favorable response to treatment can undermine a claimant's complaints of debilitating pain or other severe limitations). Plaintiff's depression related symptoms improved when he consistently took his medication, and after a medication adjustment. *Id.* (citing Tr. 348, 358, 407, 415). Plaintiff's depression was noted as in full remission in July 2017 and continued to be in remission through 2018, and the mental status examinations during the same time period were largely normal. Tr. 23 (citing Tr. 407, 415, 470, 485, 487, 490, 492). While Plaintiff offers an alternate interpretation of the evidence, ECF No. 15 at 19-20, the ALJ reasonably concluded that Plaintiff's symptom claims are inconsistent with the objective evidence, including Plaintiff's improvement with treatment. This finding is supported by substantial evidence and was a clear and convincing reason, along with the other reasons offered, to discount Plaintiff's symptom complaints.

2. *Work History*

The ALJ found Plaintiff's allegations are inconsistent with his work history. Tr. 22-23. Working with an impairment supports a conclusion that the impairment is not disabling. *See Drouin*, 966 F.2d at 1258; *see also Bray*, 554 F.3d at 1227 (seeking work despite impairment supports inference that impairment is not

1 disabling). Despite Plaintiff's allegation that his permanent intellectual disability is
2 the reason he is unable to work, Plaintiff was able to work at a substantial gainful
3 activity level in the past. Tr. 26. Plaintiff earned over the substantial gainful
4 activity threshold from 1998 through 2011. Tr. 217-20. Plaintiff reported that he
5 moved in with his mother to help with her care in 2012, Tr. 533, and reported he
6 had not been able to find a job in the town he now resides in, Tr. 534.

7 Additionally, Plaintiff's own perception of his ability to work is a proper
8 consideration in determining credibility. *See* Cause No. 2:16-cv-00402-MKD,
9 *Barnes v. Comm'r of Soc. Sec.*, 2018 WL 545722 (E.D. Wash. Jan. 24, 2018)
10 ("Evidence of Plaintiff's preparedness to return to work, even if an optimistic self-
11 assessment, is significant to the extent that the Plaintiff is willing and able to work,
12 as that belief indicates her allegation of symptoms precluding work are not
13 credible."). The ALJ noted Plaintiff reported he could work in a fast food
14 restaurant, but he felt he would not be hired because of his age, and he reported job
15 hunting after the alleged onset date but did not get any interviews. Tr. 23 (citing
16 Tr. 358, 360, 367, 460).

17 Plaintiff also reported transportation was a barrier to employment. Tr. 23
18 (citing Tr. 360). The ALJ also may consider that a claimant stopped working for
19 reasons unrelated to the allegedly disabling condition when weighing the
20 claimant's symptom reports. *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir.

2001). Plaintiff reported that he moved in with his mother to help with her care in 2012, Tr. 533, and reported he had not been able to find a job in the town he now resides in, Tr. 534. Plaintiff reported he relied on his mother for transportation, and it would be difficult for him to find transportation to work. Tr. 360.

The ALJ also noted Plaintiff had no earnings from 2013 onward, although his alleged onset date is in 2015, which calls into question whether Plaintiff's unemployment is due to his impairments. Tr. 22-23. On this record, the ALJ reasonably concluded that Plaintiff's symptom claims are inconsistent with his work history, particularly his ability to work at over the substantial gainful activity level for over ten years in the past despite his intellectual disability. *See Drouin*, 966 F.2d at 1258; *see also Bray*, 554 F.3d at 1227. This finding is supported by substantial evidence and was a clear and convincing reason to discount Plaintiff's symptom complaints.

3. *Activities of Daily Living*

The ALJ found Plaintiff's symptom claims are inconsistent with his activities of daily living. Tr. 23. The ALJ may consider a claimant's activities that undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a substantial part of the day engaged in pursuits involving the performance of exertional or non-exertional functions, the ALJ may find these activities inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*,

1 674 F.3d at 1113. “While a claimant need not vegetate in a dark room in order to
2 be eligible for benefits, the ALJ may discount a claimant’s symptom claims when
3 the claimant reports participation in everyday activities indicating capacities that
4 are transferable to a work setting” or when activities “contradict claims of a totally
5 debilitating impairment.” *Molina*, 674 F.3d at 1112-13.

6 The ALJ found Plaintiff has acted as an independent caregiver for his elderly
7 and disabled mother, which required Plaintiff handle cooking, chores, caring for
8 five dogs, shoveling snow, and cutting wood, and Plaintiff also reported walking
9 up to 10 miles daily with his dog, going fishing, and talking daily with a friend.
10 Tr. 23 (citing Tr. 350, 360, 388, 470, 516-35). Plaintiff reported his mother is
11 “very difficult,” but he was generally able to get along with her, and he spent time
12 with his nephew and nephew’s friends. Tr. 20, 299, 305, 406, 421, 493, 534. He
13 also reported interacting with others by phone and social media. Tr. 20, 358, 470,
14 485. Plaintiff was able to spend the day watching movies, attend appointments
15 independently, and job hunt. Tr. 20, 23. There are also references to Plaintiff
16 assisting firefighters with their camps and neighbors with projects. Tr. 300, 360.
17 While Plaintiff argues his activities are not inconsistent with his allegations, ECF
18 No. 15 at 18, as discussed *supra*, Plaintiff’s activities are inconsistent with
19 disabling limitations due to an intellectual disability.

1 On this record, the ALJ reasonably concluded that Plaintiff's symptom
2 claims are inconsistent with his activities of daily living. This finding is supported
3 by substantial evidence and was a clear and convincing reason to discount
4 Plaintiff's symptom complaints. Plaintiff is not entitled to remand on these
5 grounds.

6 C. Plaintiff's Literacy

7 Plaintiff contends the ALJ erred in his consideration of Plaintiff's literacy.
8 ECF No. 15 at 21-22. Under the Social Security regulations, "illiteracy" is defined
9 as "the inability to read or write," 20 C.F.R. §§ 404.1564(b)(1), 416.964(b)(1),
10 while the "ability to communicate in English" is defined as "the ability to speak,
11 read and understand English," 20 C.F.R. §§ 404.1564(b)(5), 416.964(b)(5). The
12 Ninth Circuit has held that these two requirements "will have inevitable overlap,"
13 as "[i]t is reasonable . . . to assume that one who is unable to speak and understand
14 English will also be unable to read and write English." *Chavez v. Dep't of Health*
15 *and Human Services*, 103 F.3d 849, 852 (9th Cir. 1996). In assessing illiteracy,
16 only the ability to read or write in English is considered for Social Security
17 Administration (SSA) disability purposes. *See id.* The SSA considers a claimant
18 illiterate if he or she "cannot read or write a simple message such as instructions or
19 inventory lists even though the person can sign his or her name." 20 C.F.R. §§
20 404.1564(b)(1), 416.964(b)(1). Further, an illiterate person generally "has had

1 little or no formal schooling.” *Id.* Depending on the claimant’s age, impairments,
2 and past work experience, illiteracy may render a claimant disabled. *See generally*
3 20 C.F.R. App’x 2 to Subpart P of Part 404.

4 Plaintiff alleges the ALJ failed to consider his illiteracy but points only to a
5 sentence where Plaintiff wrote a word that was not readable as evidence of
6 illiteracy. ECF No. 15 at 20-21. Plaintiff completed school through the ninth
7 grade. Tr. 50. Despite his allegation that he cannot read or write, Plaintiff reports
8 using social media and texting on his phone. Tr. 324, 354, 379, 485. In his
9 disability report, Plaintiff stated he can read and understand English, and he can
10 write more than his name in English. Tr. 246. During a cooperative disability
11 investigative unit investigation, Plaintiff was able to read three names out loud
12 without hesitation. Tr. 535. During medical visits, Plaintiff reported that “[h]e is
13 able to read, but has trouble comprehending what he is reading, and reported that
14 he cannot “read very well,” but did not report illiteracy. Tr. 401, 439. At his
15 hearing, when discussing his poor eyesight, Plaintiff’s counsel asked if Plaintiff’s
16 problems have mostly been because of his “limited ability to like read and write,”
17 to which Plaintiff responded, “read and write.” Tr. 54. Plaintiff’s counsel then
18 said, “Read instructions, understand things, do complicated work . . .”, and then
19 changed the topic. Tr. 54. Plaintiff did not testify to any specific difficulties such
20 as reading instructions.

1 As Plaintiff did not allege in his disability report that he is illiterate, and
2 there is substantial evidence in the record that demonstrates Plaintiff is literate, the
3 ALJ did not error in failing to consider Plaintiff's alleged illiteracy. Plaintiff is not
4 entitled to remand on these grounds.

5 **CONCLUSION**

6 Having reviewed the record and the ALJ's findings, the Court concludes the
7 ALJ's decision is supported by substantial evidence and free of harmful legal error.
8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is **DENIED**.

10 2. Defendant's Motion for Summary Judgment, **ECF No. 17**, is
11 **GRANTED**.

12 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

13 The District Court Executive is directed to file this Order, provide copies to
14 counsel, and **CLOSE THE FILE**.

15 DATED December 11, 2020.

16 *s/Mary K. Dimke*
17 MARY K. DIMKE
18 UNITED STATES MAGISTRATE JUDGE
19
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